MINUTES EVANS CITY COUNCIL

Regular Meeting April 2, 2013 - 7:30 P.M.

CALL TO ORDER

Mayor Achziger called the meeting to order at 7:29 p.m.

PLEDGE

ROLL CALL

Present: Mayor Achziger, Councilmembers Brown, Burmont, Neibauer, Rudy, and Schaffer

Excused: Mayor Pro-Tem Morris

AUDIENCE PARTICIPATION

There was no audience participation.

PROCLAMATION

A. Arbor Day – April 19th, 2013

Mayor Achziger read the proclamation for Arbor Day.

APPROVAL OF AGENDA

The City Clerk, Raegan Robb, made one correction to the agenda clarifying that item B. under New Business addressed 1st quarter budget revisions. Councilmember Schaffer made the motion, seconded by Councilmember Rudy, to approve the agenda, as amended. The motion passed with all voting in favor thereof.

CONSENT AGENDA

- A. Approval of Minutes of the Regular Meeting of April 2, 2013
- **B.** Ordinance No. <u>556-13</u>– An Ordinance Transferring Ownership Of Outlot G, Ashcroft Park, Amended Plat To The Village At Ashcroft, LLC, A Colorado Limited Liability Company (Second Reading)

Councilmember Schaffer made the motion, seconded by Councilmember Rudy, to approve the Consent Agenda as presented. The motion passed with all voting in favor thereof.

NEW BUSINESS

A. Public Hearing — Ordinance No. <u>557-13</u> North Point 6th Subdivision Zoning Amendment

The Mayor opened the Public Hearing at 7:35 p.m.

Zach Ratkai, City Building and Development Manager, explained that Ordinance was a request to rezone approximately 20 acres, located at the location of North Point Drive, Kingfisher Cove Drive, and

Sheltered Harbor Drive, in the North Point subdivision. Mr. Ratkai explained that the zoning amendment would change the current zoning of North Point Subdivision 6 from R-1 (Single Family Residential) to R-3 (Multi Family Residential) zoning. Mr. Ratkai talked about types of zoning surrounding the North Point Subdivision and the definitions of R-1 and R-3 zoning.

Mr. Ratkai discussed the criteria for zoning amendments according to Section 60.080 of Chapter 19 of the City Municipal Code. He stated that staffs' findings of fact and conclusions determined that the requested zone is consistent with the goals and policies of the City's Comprehensive Plan. He explained that the City's Planning Commission recommending that City Council adopt the Ordinance if the Ordinance meets all legal requirements of the City Municipal Code.

Mr. Ratkai explained that members of the North Point Homeowners' Association (HOA) spoke out against the zoning amendment at the March 12th Planning Commission hearing, where the homeowners voiced concerns about the zoning change conforming to current HOA covenants. He briefly discussed HOA governance and explained that any zoning change within an HOA would have to be resolved between a developer and an HOA Board.

Mr. Ratkai concluded by stating that the request for rezoning met all requirements outlined in the City Municipal Code and the City Comprehensive Plan, and that staff recommended upholding the decision of the Evans Planning Commission to approve the zoning amendment.

Mayor Achziger asked staff to define the term "substantial reason" according to Section 19.60.080 of the City Municipal Code, which provides that zoning amendments are approved "only if the proposed zoning is in substantial conformance with the Evans Comprehensive Plan, or there exists substantial reasoning for amending the Comprehensive Plan."

Mr. Ratkai explained that zoning amendments can be approved only if the proposed zoning conforms with the Comprehensive Plan or if there is substantial reasoning for amending the Comprehensive Plan. He explained that the Comprehensive Plan could be amended to comply with a compatible land use. However, Mr. Ratkai stated that the Comprehensive Plan already designates the future land use of the North Point Subdivision as urban-residential, which includes multi-family and single-family mixed use, and that R-3 zoning already conforms to the future land use map of the Comprehensive Plan.

Mayor Achziger asked about the legality between City zoning regulations and HOA covenants.

Russ Anson, City Attorney, explained that City zoning regulations would supersede HOA covenants, but that HOA covenants could be more restrictive than City zoning. He discussed the criteria for zoning amendments, which requires the zoning change to be in substantial compliance with the City's Comprehensive Plan. Mr. Anson explained that the Planning Commission determined that the criteria had been met when it approved the zoning amendment at the Commission's meeting on March 12, 2013.

The applicant, Mr. Michael Tilley, President of Front Range Land Resources, from 297 Jackson Street,

Denver, CO 80206, addressed the City Council and talked about his experience as the developer of the North Point Subdivision and the reasoning for rezoning Subdivision 6. Mr. Tilley explained that the zoning change would allow for the highest and best use of the 6th Subdivision in the North Point Subdivision. He talked about the members of the HOA that have concerns about the change of use and talked about his plans to schedule future meetings with the homeowners to work through any land use disagreements.

Council Member Schaffer asked Mr. Tilley about his plans for developing Subdivision 6 in North Point.

Mr. Tilley stated that he planned on developing different types of multi-family housing on the parcel.

Council Member Schaffer expressed concerns about apartments being built in the North Point subdivision, and explained that he was a resident of the Subdivision.

Discussion ensued concerning whether Council Member Schaffer should be excused from the meeting.

Mr. Anson explained past practice for Members of City Council to excuse themselves from agenda items that involve a conflict of interest. Council Member Schaffer excused himself from the public hearing.

Mr. Tilley explained that he was not certain about the City's zoning amendment process and viewed the rezoning request as the first step before developing a complete site plan for Subdivision 6. He also indicated he would reach out to the HOA members to discuss the future of the parcel once the zoning amendment was approved.

The following citizens addressed City Council to testify against the Ordinance:

John Musil, from 2917 Rock Point Drive, explained that he lived near the area being considered for the rezoning. Mr. Musil discussed potential problems that could result from rezoning the area to multi-family residential, including traffic and a decrease in the value of neighboring homes in the subdivision. He provided an example from Settlers' Village in Milliken where a similar rezoning change resulted in decreased home values.

Cassandra Swanson, from 3402 Sheltered Harbor Drive, addressed City Council to explain that the rezoning would negatively impact the families living in the North Point Subdivision. Ms. Swanson talked about home improvements she made on her property, and indicated that her family may sell their home if the zoning was changed to allow multi-family units in the Subdivision. She talked about current traffic problems in her neighborhood and explained that they would worsen if more units were developed in Subdivision 6. She expressed the concerns of other homeowners in the North Point Subdivision about the rezoning.

Clifford "Jay" Deibel Jr., from 3001 Rock Point Drive, addressed City Council to talk about his concerns

about the rezoning. Mr. Deibel talked about moving to Evans in 2003 and why he chose to live in the North Point Subdivision, because it was zoned for single-family homes. He discussed the lack of communication between the developer and the property owners concerning the future use of the Subdivision. He also talked about the City's Comprehensive Plan and the declarations that regulate the North Point Subdivision that would not currently allow multi-family residences. Mr. Deibel expressed concerns about future legal battles between members of the Homeowners Association (HOA) and the developer over the zoning change.

Mr. Deibel read letters opposing the Ordinance from the following individuals from the HOA:

- Gerald and Beverly Worrall, from 3608 North Point Drive (Attachment A); and
- Ron and Brenda Stone, from 2923 Spring Cove Drive (Attachment B).

Darlene Peterson, from 2909 Swan Point Court, talked about her neighborhood and the current traffic problems that already exist in the Subdivision. Ms. Peterson expressed the need for traffic safety in the North Point Subdivision and the problems that could result from multi-family housing in the Subdivision.

Gerald Osren, from 3006 Spring Cove Drive, expressed his opposition to the Ordinance and discussed his concerns about the impact of a zoning change to the North Point Subdivision.

Jeff Jewkes, from 3005 Swan Point Court, expressed his opposition to rezoning the area along North Point Drive from its current zoning of R-1 (Single Family Residential) to the R-3 (Multi Family Residential). Mr. Jewkes talked about his concerns over the zoning change, and cautioned City Council about changing the zoning use of the Subdivision to multi-family residential. He talked about problems that could result from the zoning amendment, and talked about a past experience in Salem, Oregon where zoning changes were detrimental to his neighborhood.

Todd Konigsfeld, from 3600 Tide Water Drive, talked why he opposed the Ordinance and discussed current traffic problems in the subdivision. Mr. Konigsfeld expressed his concerns about the types of multi-family residences that could be built in the North Point Subdivision if the property was rezoned.

Billy Jack, from 2913 Anchor Drive, expressed the improvements that have happened in the North Point Subdivision and talked about potential problems that could result if the property is rezoned for multifamily residential development. Mr. Jack asked all audience members opposed to the Ordinance to raise their hands to show the amount of people that attended the meeting.

Ben Yeargon, from 2910 Rock Point Drive, talked about the current amenities in the North Point Subdivision and his opposition to the zoning changes. Mr. Yeargon indicated that he would leave Evans if the zoning amendment was approved.

Matt Rosten, from 3511 Tide Water Drive, talked about living in the North Point Subdivision and the crime from nearby apartments in Greeley, west of the Subdivision. Mr. Watson talked about the increase in crime that can result from apartment complexes developed in areas zoned for multi-family.

Kyle Stapleton, from 3009 Anchor Drive, talked about why he chose to live in Evans, the improvements that he and other homeowners have made to their property in the North Point Subdivision, and explained his opposition to the Ordinance.

Michelle Haynes, from 3401 Sheltered Harbor Drive, talked about her family and safety concerns about the North Point Subdivision and expressed concerns with rising crime that could result from apartment complexes built in the Subdivision if it was zoned for multi-family.

Mr. Tilley addressed several of the concerns made by the residents of the North Point Subdivision. He explained that the zoning change would allow several types of multi-family units such as: duplexes, townhomes, and apartment buildings. He also talked about current multi-family units that already exist in the North Point Subdivision.

Mr. Tilley also talked about the growth of the Subdivision and talked about the long-range plan for Subdivision 6. He explained that there was opposition to the North Point Subdivision approximately 13 years ago when it was first developed, and described the current amenities in the Subdivision. Mr. Tilly also talked about his plans to develop a conceptual plan and have future meetings with the concerned members of the HOA before developing Subdivision 6. He also described some of the beneficial land uses that could be developed in Subdivision 6.

Mr. Tilley stated that the property does meet legal requirements to be rezoned to R-3, and asked for City Council's support for the Ordinance.

Mr. Anson asked Mr. Tilley about developing a site plan for the development and whether he would allow the City to approve his site plan along with the rezoning request.

Mr. Tilley explained that he has met all of the City's requirements to request a zoning amendment and he would not submit a site plan prior to being considered for rezoning.

Mr. Anson expressed concerns about Mr. Tilley developing Subdivision 6 without any input from City Council or the HOA if the rezoning is approved prior to having a site plan developed.

Mr. Radtkai, explained the process for development after rezoning amendments are approved, stating that the site plans for Subdivision 6 would be considered by the Evans Planning Commission, City Council, and neighborhood meetings with property owners, according to City Code.

Mayor Achziger thanked staff for their summary and asked that discussion remain on the process and procedures for the public hearing.

Mayor Achziger asked about the formation of the HOA, the HOA covenants regulating the zoning, how the development was marketed, and if property owners understood that an HOA would control the

Subdivision.

Mr. Tilley described how the HOA was sold to different builders and explained that homeowners were aware of the covenants, budget, and financing of the HOA before purchasing their property.

Mr. Tilley talked about the growth of the Subdivision to its current size and talked about the five previous filings that the Subdivision is comprised of.

Council Member Burmont asked whether Subdivision 6 is within the HOA boundary.

Mr. Tilley stated that he was not sure if Subdivision 6 was within the North Point HOA. Discussion ensued between Mr. Tilley and Council Member Burmont on whether Subdivision 6 was under the HOA.

Council Member Burmont asked about the number of lots platted in Subdivision 6 and the total number of lots in the developed parcels of the Subdivision.

Mr. Tilley stated that there were 87 lots platted in North Point Subdivision 6.

John Musil, from 2917 Rock Point Drive, responded to Council Member Burmont and explained that there are currently 185 total units in the North Point Subdivision, due to duplexes that were subdivided under filing #3.

Council Member Burmont asked if HOA members were represented by each lot in the Subdivision.

Mr. Tilley stated that each lot represents one HOA vote and that the new development in Subdivision 6 would add 87 new homeowner votes into the HOA.

Mayor Achziger summarized the purpose of the public hearing for the zoning amendment, and stated that City Council had an obligation to represent the citizens of the City, and take action with the best interest of the citizens in mind. He explained that City Council's decision will be based on the evidence and testimony provided by Mr. Tilley, staff, and the concerned citizens of the North Point Subdivision.

Mr. Tilley asked City Council for their support and explained that he felt his request was both legal and consistent with the City Comprehensive Plan.

Mr. Anson explained that the purpose of the Public Hearing was to allow City Council to weigh all of the evidence presented in order to reach a decision and also to consider if the rezoning request is in substantial conformance with the Comprehensive Plan, despite the decision of the Planning Commission. Mr. Anson explained that Section 19.60.040(B) of the City Municipal Code requires five affirmative votes from City Council to overrule the zoning recommendations of the Planning Commission.

Mayor Achziger clarified the purpose of the public hearing and discussed the requirement for five affirmative votes from City Council. He also asked Mr. Tilley if citizens opposing the Ordinance could

have a chance for follow-up questions.

Mr. Tilley agreed to let citizen have another chance to speak.

Ms. Peterson, from 2909 Swan Point Court, readdressed City Council to express concerns about responses from the applicant regarding his process and whether he would consider the concerns of the HOA members.

Mr. Billy Jack, from 2913 Anchor Drive, readdressed City Council to express concerns about having apartments in the Subdivision and explained that renters may be less invested in their housing and community.

Council Member Rudy asked Mr. Ratkai if an applicant must wait to resubmit a zoning amendment following a denial by City Council. Mr. Ratkai indicated that he was not aware of any time period that must lapse before an applicant could resubmit a zoning amendment request.

Mayor Achziger closed the public hearing at 8:49 p.m.

Council Member Neibauer discussed the responsibilities of City Council to represent the best interests of the citizens, enhance economic development, and consider the best uses related to land use development. She talked about the City's Mission Statement to preserve quality of life and the small town atmosphere of the City, and explained that the amount of opposition to the Ordinance shows that the request may not be in the best interest of the citizens. Council Member Neibauer indicated that the R-1 zoning fits with the City's Comprehensive Plan and talked about her interpretation of best use in this case, which would be to preserve the quality of life for the current citizens. Council Member Neibauer stated that she was opposed to the Ordinance to allow R-3 multi-family zoning.

Council Member Burmont expressed concern about missing City Council members and whether the Ordinance should be tabled to have an additional City Council Member vote on the Ordinance. He talked about living in a similar neighborhood in Evans that is zoned for single-family, and how he would oppose multi-family zoning in his subdivision.

He also talked about the good quality of life that exists in the North Point Subdivision and expressed concerns about the uncertainties and unanswered questions related to the development of Subdivision 6.

Mayor Achziger explained that the zoning change could alter the vision that was sold to homeowners of the North Point Subdivision when they purchased their property. He discussed the issue of property rights for property owners, like Mr. Tilley, to develop their property according to the regulations established by the City, but explained how the rezoning could negatively impact the current residents.

Mayor Achziger also discussed the need for developers, like Mr. Tilley, to communicate better with neighbors about potential land uses changes, and urged Mr. Tilley to improve his communication with the

homeowners in the Subdivision if the Ordinance is denied. He also talked about covenants that control subdivisions, and explained that subdivision covenants do not always protect the expectations of homeowners. Mayor Achziger indicated that he would be voting against the zoning amendment and urged the applicant to develop a conceptual plan to present to City Council and to the homeowners in the North Point Subdivision.

Council Member Rudy moved to deny the Ordinance, seconded by Council Member Burmont, the motion passed on a roll call vote of 5-0, with 2 excused.

B. Ordinance No. <u>558-13</u> — 1st Quarter Budget Revision

Jessica Gonifas, Deputy City Manager, presented the Ordinance to City Council, and explained the 1st quarter changes to revenues, expenditures, and transfers by the City's General Fund. Ms. Gonifas explained that some of the items have been previously approved by the City Council, and require additional explanation. She summarized the revised budget items, as follows:

- Item 1.1 includes an increase in expenditures related to the administrative services reorganization in early 2013 for salary and training.
- Item 1.2 is a total of carry forward items related to saving in the 2012 budget. All of these items related to a specific project(s) which were appropriated in the 2012 budget, but were not finished in the fiscal year. Since appropriations lapse, the budget for these items needs to be appropriated (carried forward) in 2013. The total includes the preliminary budget revision approved by City Council for \$261,398 related to economic development projects.
- Item 1.3 represents an increase in budget for employee tuition reimbursement.
- Item 1.4 is the transfer from the City to the Evans Redevelopment Agency (ERA) necessary to fund the ERA's 2013 budget.
- Item 1.5 is an increase in budget using prior year traffic calming surcharge revenue for the e-ticketing program in the police and courts departments.
- Item 1.6 represents an increase in insurance proceeds and expenditures for a replacement police vehicle.
- Item 1.7 is an increase in expenditures for the police department related to unanticipated Youth and Family Service contract increases.
- Item 1.8 is recognition of revenue and expenditures for a grant also in the police department.
- Item 1.10 includes the transfer from the General Fund to the City's General Obligation Debt Fund to retire the debt in December 2013.
- Item 1.11 represents the transfer from the Emergency Contingency fund into the General Fund for excess fund balance in relation to the \$1 million cap put on that fund by the citizens in the November 2012 general election.
- Item 1.12 is a transfer from the Cemetery Endowment Fund related to 2012 excess fund balance and projected increases in 2013 revenue in that fund.
- Items 1.14 through 1.21 are recommended for funding from the Finance Committee based on the

one – time list priorities identified by the management team. The revenue source for all items is excess 2012 fund balance.

- Item 1.29 is an increase in expenditures for the current year related to salaries.
- Item 1.38 represents the increase in revenue to the General Fund for the share of expenditures that relate to providing administrative services to the enterprise funds.

Ms. Gonifas talked about the City's Capital Improvement Plan (CIP), which includes expenditures for

- the following 2012 capital projects:
- US 85 Control Access at 31st Street:
- US 85 Control Access at 37st Street;
- Evans Ditch bike path improvements;
- 37th Street and 23rd Ave Bike Path improvements;
- street lighting; and
- anticipated grant revenue from the North Front Range Metropolitan Planning Organization.

She also talked about the City Water Fund, which includes:

- a 2012 capital project for the Flume Drop Structure;
- system development fees due to the City of Greeley for 2012 water treatment;
- a reduction in operating expenses and some capital projects to fund Greeley system development charges; and
- an increase in the overhead transfer to the General Fund for the share of expenditures that relate to providing administrative services to the Water Fund.

She also briefly discussed the Waste Water Fund, Storm Drainage Fund, and the Volunteer Pension Fund.

Council Member Burmont asked about the Prairie View Drive project, and expressed frustrations about the ongoing delay of the project. Approximately \$124,000 was budget for the Prairie View Drive project, under the 2013 one–time list, for completion in 2013.

Cameron Parrott, City Engineer, explained that the amount budgeted would allow for the irrigation, distribution systems, as well as some landscaping for this project in 2013.

Discussion ensued concerning the Prairie View Drive Project.

Council Member Burmont provided a history about the project, and explained that the City has been trying to complete the project since 2009.

Aden Hogan, City Manager, stated that staff would make the Prairie View Drive project a priority in 2013.

Council Member Brown made the motion, seconded by Council Member Shaffer, to adopt the Ordinance. The motion passed with all voting in favor thereof.

C. Approval of Draft Drought Management Plan

Cameron Parrot, City Engineer, addressed City Council and explained the need for the City to adopt the Drought Management Plan to mitigate drought situations and provides more flexibility for the City during drought situations. Mr. Parrott talked about the current Drought Response Plan, which can over-restrict water usage too quickly. He continued to compare the current Drought Response Plan and the Drought Management Plan. He also discussed the implementation schedule of the Drought Management Plan as well as the 60-day requirement for public comment.

Mayor Achziger asked about adopting the Drought Management Plan prior to the required 60-day public hearing.

Mr. Parrot explained that the current Drought Response Plan was in the spirit of the City's Drought Response Plan, which has already been adopted by the City.

Mr. Anson explained that City Code would have to be amended to implement the Drought Management Plan.

Discussion ensued concerning drought conditions in the area and the process for adopting the Drought Management Plan.

Mayor Achziger asked how the City will inform citizens to implement the water restrictions under the drought plan.

Discussion ensued between City Council Member and staff about the various ways to inform citizens about the water restrictions under the Drought Management Plan.

Mr. Parrot responded to questions about non-potable water, stating that the drought management plan would address reduction in all water use.

Council Member Rudy made the motion, seconded by Council Member Brown, to adopt the Drought Management Plan. The motion passed with all voting in favor thereof.

D. Resolution No. <u>09-2013</u> Drought Stage Declaration

Mr. Parrot discussed the City's authority to implement water restrictions during droughts and talked about the need for City Council to determine a drought stage to implement specific water restrictions. He discussed the different drought stages and explained the difference between the current Drought Response Plan and the Proposed Drought Management Plan. Specifically, Mr. Parrott explained the difference between Severe (level 1) drought stage and Critical Drought Stage.

Mr. Parrot discussed methods to raise awareness to City water users, including: Website, Postcards, Newsletter, Notices, and face-to-face contact.

Mayor Achziger suggested using the electronic sign in front of the City Complex.

Council Member Burmont asked about the need to adopt an Ordinance to implement the Drought Management Plan.

Mr. Anson explained the need to adopt an Ordinance for the Drought Management Plan, and offered the option of an Emergency Ordinance that could be adopted by Council at the April 16th meeting.

Mr. Hogan also explained the different options available to implement the Drought Management Plan and talked about the need to adopt the Resolution.

Council Member Burmont asked about the need to adopting the Resolution if there was still need for an ordinance to adopt the Drought Management Plan.

Members of City Council expressed the need to educate citizens about current drought conditions and the water restrictions under the Drought Management Plan.

Mr. Anson talked about provisions in the Charter that require an Ordinance for any fines or penalties enforced by the City, and explained that the resolution would not allow the city to impose a penalty for not complying with water restrictions.

Mr. Hogan discussed the need for both Resolution 09-2013 and an ordinance to provide for penalties if the City should decide to impose fines for not complying with water restrictions.

Discussion ensued between City Council Members and staff about the need for the Resolution and an Ordinance to adopt the Drought Management Plan and allow for any fines or penalties.

Council Member Neibauer made the motion, Seconded by Council Member Schaffer, to approve the Resolution. The motion passed with all voting in favor thereof.

REPORTS:

A. City Manager Report

The City Manager had no reports.

City Attorney's Report B. The City Attorney had no reports.

AUDIENCE PARTICIPATION:

There was no audience participation.

ADJOURNMENT:

Mayor Achziger adjourned the meeting at 9:30 p.m.

April 2, 2013

3608 North Point Drive Evans, CO 80620

Evans Planning Commission:

We have lived in North Point subdivision since October 2002 and have owned our home for all that time.

WE OPPOSE CHANGING THE ZONING FROM Residential 1 to RESIDENTIAL 3.

Geald Worrall

Gerald Worrall

Beverly Worrall

Beverly Worrall

To! Evans City Counse),

my name if Ron Snow I own a home in the northpoint Subdivision on Spring Cove Dr. On this rezoning is ever, my wife of do not repeate "DO NOT" want apartments in our Subdivision, this property is zoned for Single family homes and this is the way it needs to Stay-NO APARTMENTS

Thank Sword
Ron Sword Snow
Blenda Snow

2923 Spring Cove Dr. Evans Colo 80620

SIGN-IN SHEET FOR April 2, 2013 CITY COUNCIL MEETING

Please silence all cell phones and personal communication devices during the meeting.

City Council please asks to limit the time of your comments to two (2) minutes.

PLEASE PRINT-CLEARLY

Name	Address	List Agenda Item
Egan Kannah		557- <i>1</i> 3
John Musil	2917 Rock Point Daire	557-13
Clifford Deibel In	3001 Rockpoint Do Evans	557-13
Billy Jack	2913 Anchor Drive Evens	557-13
Mike Tilley	297 TACKSONSt. Denser	587-13
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